Supreme Court, U. S.
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No. 77-643

IN THE
SUPREME COURT OF THE
UNITED STATES
October Term, 1977

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

v.

EDWARD SADLOWSKI
AND
RAY MARSHALL, *Secretary of Labor*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF REPORTING IMPORTANT DEVELOPMENT

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Petitioner submits this supplemental brief pursuant to Rule 24(5) to report an important development of which this Court should be aware in ruling upon the petition for certiorari: announcement of the Solicitor of Labor's views with respect to the statutory preclusion issue presented in this case. Heretofore, the Solicitor had not announced a view on the issue (see Petition, page 8), and the court below (as well as the D.C. Circuit in the *Local 693* case) relied upon this abstention as evidence that awards of attorneys fees are not inconsistent with the statutory purpose:

> "As the Secretary's determination to take no position on this issue [of the propriety of an award of attorney's fees] suggests, allowance of attorney's fees for union member efforts in aid of the Secretary's action does not undercut the exclusivity of the administrative remedy . . .
>
> * * *
>
> "Nothing has been suggested to us which indicates that the Secretary's role could be or has been threatened by Sadlowski's attorneys . . ." (App. 20a, 21a).

The Solicitor of Labor has now reconsidered, and has concluded that "the Department was mistaken in its decision to take no official position in these cases. "In a letter to petitioner's counsel herein, the Solicitor states that "the allowance of such fees will, in fact, interfere with the Department's effective enforcement of Title IV." The original of this letter has been lodged with the Clerk, and it is reprinted in an appendix to this brief.

Three reasons are cited by the Solicitor for her conclusion that the availability of fee awards would interfere with the effective enforcement of Title IV:

(1) Fee claims will require extensive litigation relating to the merits of elections, even where the Secretary's action has been settled, and "could well have the effect of discouraging settlements in other Title IV cases."

(2) Fee claims of necessity must challenge the adequacy of the Secretary's performance (else intervenors could not claim to have conferred any benefit) and this "creates the unfortunate situation of making the Secretary a co-defendant with the union on the attorney's fee question."

(3) The availability of fees will encourage "frivolous intervention in Title IV suits in the hope of recovering substantial attorney's fees from the union should the suit be successful" and will "protract the litigation of Title IV suits as intervenors attempt to inject new matters in order to lay the predicate for a fee claim."

The Solicitor of Labor states further that if certiorari is granted in this case she will urge the submission of a brief by the Solicitor General "opposing the availability of attorney's fees to Title IV intervenors."

This expression of the Solicitor's views confirms the arguments advanced in our petition with respect to the statutory preclusion issue, and makes even clearer that certiorari ought to be granted.

Respectfully submitted,

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Appendix

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
Washington, D.C. 20210

January 5, 1978

Michael H. Gottesman, Esquire
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Re: *United Steelworkers of America*
v. *Edward Sadlowski*

Dear Mr. Gottesman:

Pursuant to your request, I have carefully reviewed the above-captioned case in light of the petition for certiorari which was filed in November. I have also reviewed the earlier *Local 639, Teamsters* case. Based on this review, I am convinced that the Department was mistaken in its decision to take no official position in these cases with respect to the allowance of attorneys' fees to intervenors in suits brought by the Secretary of Labor under Title IV of the Landrum-Griffin Act. It is my view that the allowance of such fees will, in fact, interfere with the Department's effective enforcement of Title IV and it is unfortunate that the courts have concluded from the Department's silence on the issue that it will not. I am also disturbed by the implication in the Court of Appeals' opinion that the intervenor may seek to litigate issues arising in connection with the contested election in support of his attorney's fee application, even though consideration of the merits is otherwise foreclosed by the parties' stipulation of settlement. To permit litigation concerning the merits of the underlying dispute in such circumstances could well have the effect of discouraging settlements in other Title IV cases.

I am also troubled by the intervenor's attack on the Secretary of Labor. It is apparent that an intervenor, in order

to establish that he conferred a "benefit" which would not have resulted had the Secretary prosecuted the suit alone, must inevitably attack the performance of the Secretary as an integral part of his claim for attorneys' fees. This creates the unfortunate situation of making the Secretary a co-defendant with the union on the attorney's fee question.

I am further concerned that the decisions of the Third and D.C. Circuits may encourage frivolous intervention in Title IV suits in the hope of recovering substantial attorney's fees from the union should the suit be successful, and will protract the litigation of Title IV suits as intervenors attempt to inject new matters in order to lay the predicate for a fee claim.

It is unfortunate that the Department did not participate in this case at the appellate level. However, if the Supreme Court grants certiorari, I will urge the Department to request the permission of the Solicitor General to submit a brief on the merits opposing the availability of attorney's fees to Title IV intervenors.

Sincerely,

/s/ CARIN ANN CLAUSS

Solicitor of Labor